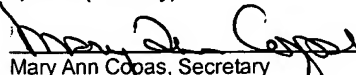




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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Mary Ann Copas, Secretary

Appl. No. : 10/659,840  
Applicant : John Greeson et al  
Filed : September 11, 2003 (CIP filing date)  
For : METHOD AND MIXTURE FOR PROTECTING ANIMALS  
AGAINST PESTS  
TC/A.U. : 1616  
Examiner : Neil Levy

Customer No: 30996

Board of Patent Appeals and Interference  
U.S. Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

**MAIL STOP: APPEALS**

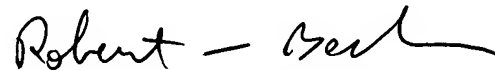
Sir:

Appellant hereby appeals to the Board of Patent Appeals and Interferences from the decision dated April 10, 2006 of the Examiner finally rejecting claims 1 - 19.

1. According to the requirements of CFR 1.192, appellant herewith encloses an Appeal Brief.
2. The fee of \$250.00 is enclosed in payment for filing such Appeal Brief.
3. Appellant does not wish to arrange an oral hearing for this appeal.

If the amount enclosed should be insufficient, please charge the remainder to Deposit Account No. 02-1653.

Respectfully Submitted,



Robert W. Becker, Reg. No. 26,255  
for applicant(s)

ROBERT W. BECKER & ASSOCIATES  
707 State Hwy 333, Ste. B  
Tijeras, New Mexico 87059-7507

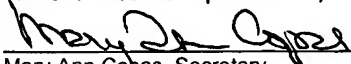
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**APPEAL BRIEF**

The Applicants submit the following for their brief on appeal and respectfully request consideration of same. The Applicants request withdrawal of the rejections made and that the Application be placed in line for Allowance.

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**I. REAL PARTY IN INTEREST**

The real party in interest in the instant application is the Assignee, Dairy Solutions, LLC.

**II. RELATED APPEALS AND INTERFERENCES**

The Applicants are unaware of any related appeals or interferences with regard to the application.

**III. STATUS OF CLAIMS**

Claims 1-19 are rejected and are appealed.

**IV. STATUS OF AMENDMENTS**

A final Office Action was mailed 04/10/2006. No amendment was submitted in response to the final rejection.

**V. SUMMARY OF CLAIMED SUBJECT MATTER**

Independent claims 1 and 12 define a mixture for application on an animal, to provide barrier protection against pests, and a method of protecting an animal against pests (page 1, first paragraph). A carrier or combination of carriers is provided that at least after application has an absolute or resultant viscosity of from 100 to 1200 S.U.S., where at least one non-systemically

operating pesticide is mixed with the carrier or combination of carriers (page 4, line 18, to page 5, line 2).

Claims 2 and 13 provide that the mixture contains no surfactant, emulsifier, or emulsifying agent, either in solution or in suspension (page 5, lines 2 – 7).

Claims 9 and 16 provide that the viscosity is greater than 120 S.U.S. (page 5, lines 17 and 18).

Claims 11 and 19 provide that the mixture further includes a volatile compound that is soluble in or miscible with the carrier or combination of carriers, wherein upon application to an animal the volatile compound evaporates to such an extent that the absolute or resultant viscosity is obtained (page 8, line 19, to page 9, line 3).

## **VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

1. Whether claims 1, 2, 9, 11, 12, 13, 16 and 19 are anticipated under 35 USC 102(b) by, or, in the alternative, are obvious under 35 USC 103(a) over, US Patent Number 3,395,990 (Geary).

2. Whether claims 1, 2, 9, 11, 12, 13, 16 and 19 are anticipated under 35 USC 102(b) by US Patent Number 4,902,510 (Garden).

3. Whether claims 1, 2, 9, 11, 12 and 13 are anticipated under 35 USC 102(b) by US Patent Number 5,104,659 (Fishbein).

4. Whether claims 1, 2 and 9 are anticipated under 35 USC 102(b) by US Patent Number 4,176,076 (Waldstein).

## **VII. ARGUMENT**

### **1. Rejection of claims 1 and 12 under 35 USC 102(b) or under 35 USC 103(a) over Geary.**

Geary relates to a chemical stabilizer, in other words, an additive, to make a pesticide last longer. There is no disclosure in Geary relating to the viscosity of the basic product, which is understandable since viscosity is not relative to the function of the stabilized composition of Geary. Thus, it is respectfully submitted that Geary neither teaches nor suggests all of Applicants' features and limitations, and therefore cannot be an appropriate reference under either MPEP 2131 or 2143.03, since Geary does not teach or suggest all of Applicants' claim limitations, and certainly does not show Applicants' identical invention in as complete detail as is contained in claims 1 and 12.

### **2. Rejection of claims 2 and 13 under 35 USC 102(b) or under 35 USC 103(a) over Geary.**

Geary provides no teaching or suggestion that the mixture should contain essentially no surfactant, emulsifier, or emulsifying agent.

### **3. Rejection of claims 9 and 16 under 35 USC 102(b) or under 35 USC 103(a) over Geary.**

Geary does not teach or suggest a viscosity of greater than 120 S.U.S.. The Examiner has referred to example 15-B of Geary, which mentions mineral oil as one of the substituents, which however is mixed with resinous product. This can in no way provide a teaching of any specific viscosity.

**4. Rejection of claims 11 and 19 under 35 USC 102(b) or under 35 USC 103(a) over Geary.**

Geary does not teach or suggest including a volatile compound that is soluble in or miscible with the carrier or combination of carriers such that upon application to an animal the volatile compound evaporates to such an extent that the required or absolute resultant viscosity is obtained.

**5. Rejection of claims 1 and 12 under 35 USC 102(b) over Garden.**

In contrast to Applicants' mixture, Garden provides a thin pour-on formulation in order to provide a skin contact pesticide. In other words, Garden provides a thin product so that it can penetrate the hair and get to the skin, i.e. for systemic action. Applicants on the other hand provide a barrier product that will remain on the animals to prevent pests from getting to skin, whereby Applicants' pesticide is defined as acting non-systemically relative to the host animal. Garden provides no disclosure for Applicants' claimed viscosity since the Garden product is much thinner and hence cannot prevent penetration to the skin, in contrast to Applicants' mixture which, due to the claimed viscosity, is able to at least minimize penetration to the skin. Therefore, Garden does not teach every

element of Applicants' claims 1 and 12, and cannot be an appropriate reference under MPEP 2131.

**6. Rejection of claims 2 and 13 under 35 USC 102(b) over Garden.**

Garden provides no teaching that the mixture should contain no surfactant, emulsifier, or emulsifying agent.

**7. Rejection of claims 9 and 16 under 35 USC 102(b) over Garden.**

Garden's thin pour-on formulation provides no teaching that the viscosity should be greater than 120 S.U.S..

**8. Rejection of claims 11 and 19 under 35 USC 102(b) over Garden.**

Garden provides no teaching of a volatile compound that is soluble in or miscible with the carrier or combination of carriers such that upon application to an animal the volatile compound evaporates to such an extent that the absolute or resultant viscosity required by claims 1 and 12 is obtained.

**9. Rejection of claims 1 and 12 under 35 USC 102(b) over Fishbein.**

The Fishbein composition and method is not relevant to Applicants' mixture and method. In particular, Fishbein discloses a plasticizer system, and relates to molding devices that contain an insecticide. It should be noted that the Fishbein composition is cured after being applied to an object, such as an ear



tag, so that the critical viscosity defined by Applicant's mixture has no relevance for, nor could it be taught by, Fishbein.

**10. Rejection of claims 2 and 13 under 35 USC 102(b) over Fishbein.**

Fishbein provide no teaching that a carrier having a viscosity of from 100 to 1200 S.U.S. should contain no surfactant, emulsifier, or emulsifying agent.

**11. Rejection of claim 9 under 35 USC 102(b) over Fishbein.**

In addition to the foregoing discussion in conjunction with claims 1 and 12, Fishbein certainly provides no teaching of a requirement that the viscosity be greater than 120 S.U.S..

**12. Rejection of claim 11 under 35 USC 102(b) over Fishbein.**

Fishbein provides no teaching of a volatile compound that is soluble in or miscible with a carrier or combination of carriers such that upon application to an animal the volatile compound evaporates to such an extent that the absolute or resultant viscosity required by claims 1 and 12 is obtained.

**13. Rejection of claim 1 under 35 USC 102(b) over Waldstein.**

Waldstein discloses a rust inhibitor for sewer drains, and can therefore not teach Applicants' mixture for application on an animal. Applicants furthermore respectfully submit that the preamble language "for application on an animal" is a critical claim limitation that must be considered pursuant to the last portion of

MPEP 2111.02 PREAMBLE STATEMENTS RECITING PURPOSE OR INTENDED USE. In the "Jansen" case cited in this MPEP section, it is indicated that in a claim similar to Applicants', the preamble is not merely a statement of effect that may or may not be desired or appreciated, but rather is a statement of the intentional purpose that is to be performed.

**14. Rejection of claim 2 under 35 USC 102(b) over Waldstein.**

Waldstein provides no teaching that a carrier for a mixture for application on an animal, and having a viscosity of from 100 to 1200 S.U.S., should contain no surfactant, emulsifier, or emulsifying agent.

**15. Rejection of claim 9 under 35 USC 102(b) over Waldstein.**

In addition to the foregoing discussion in conjunction with claim 1, Waldstein provides no teaching of a viscosity for a carrier greater than 120 S.U.S..

In view of the foregoing discussion, it is respectfully requested that the Honorable Board of Patent Appeals and Interferences overrule the final rejection of claims 1 - 19 over the cited art, and hold that Appellants' claims be allowable over such art.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Robert - Becker", with a stylized flourish at the end.

Robert W. Becker, Reg. No. 26,255  
Attorney for Applicant

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**VIII. CLAIMS APPENDIX**

**Copy of Claims Involved in the Appeal:**

1. A mixture for application on an animal, to provide barrier protection against pests, comprising:

a carrier or combination of carriers that at least after application has an absolute or resultant viscosity of from 100 to 1200 S.U.S.; and

at least one pesticide with said carrier or combination of carriers, wherein said pesticide acts non-systemically relative to a host animal.

2. A mixture according to claim 1, wherein said mixture contains essentially no surfactant, emulsifier, or emulsifying agent, either in solution or in suspension.

3. A mixture according to claim 1, wherein said carrier or combination of carriers includes an oil-based carrier.

4. A mixture according to claim 3, wherein said oil-based carrier is mineral oil.

5. A mixture according to claim 1, wherein said carrier or combination of carriers is inert relative to said pesticide.

6. A mixture according to claim 1, that further includes a compound that has at least one of the properties of being light reflective, and ultraviolet blocking or absorptive.

7. A mixture according to claim 1, wherein said at least one pesticide is selected from the group consisting of pyrethroids and organophosphates.

8. A mixture according to claim 7, wherein said at least one pesticide is permethrin or pyrethrin.

9. A mixture according to claim 1, wherein said viscosity is greater than 120 S.U.S.

10. A mixture according to claim 9, wherein said viscosity is 300 to 650 S.U.S.

11. A mixture according to claim 1, which further includes a volatile compound that is soluble in or miscible with said carrier or combination of carriers, wherein upon application to an animal said volatile compound evaporates to such an extent that said absolute or resultant viscosity is obtained.

12. A method of protecting an animal against pests, said method including the steps of:

providing a carrier, or combination of carriers, that at least after an application has an absolute or resultant viscosity of from 100 to 1200 S.U.S.;

mixing at least one of a non-systemically operating insecticide, ectoparasitide, viricide, insect or other arthropod growth regulator (IGR), bacteriacide, and bacteriostatic compound with said carrier to provide a mixture; and

applying said mixture to an animal.

13. A method according to claim 12, wherein said mixture contains essentially no surfactant, emulsifier or emulsifying agent, either in solution or in suspension.

14. A method according to claim 12, wherein said step of applying comprises misting, spraying or pouring said mixture directly onto an animal.

15. A method according to claim 12, wherein said carrier or combination of carriers includes mineral oil.

16. A method according to claim 12, wherein said viscosity is greater than 120 S.U.S.

17. A method according to claim 16, wherein said viscosity is 300 to 650 S.U.S.

18. A method according to claim 12, wherein said mixture further includes a compound that has at least one of the properties of being light reflective, and ultraviolet blocking or absorptive.

19. A method according to claim 12, which includes the further step of adding to said carrier or combination of carriers a volatile compound that is soluble in or miscible therewith, wherein upon application to an animal said volatile compound evaporates to such extent that said absolute or resultant viscosity is obtained.

**IX. EVIDENCE APPENDIX**

None.

**X. RELATED PROCEEDINGS APPENDIX**

None.